

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **Building & Planning Services**

AGENDA DATE: **April 19, 2005**

CONTACT PERSON/PHONE: **Patricia D. Adauto, Deputy City Manager for Building
& Planning Services.**

DISTRICT AFFECTED: **4**

SUBJECT:

Item is to request APPROVAL of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a *Landscaping Cost Sharing Agreement* between the City of El Paso and the Texas Department of Transportation for the landscaping of medians on Dyer Street from Hondo Pass to McCombs.

BACKGROUND / DISCUSSION:

PRIOR COUNCIL ACTION:

This project is funded through the 2004 Bond Program.

AMOUNT AND SOURCE OF FUNDING:

Funding made available through general obligation bonds approved by the voters: 2004 Bond Election. No budgetary adjustments are necessary. Funding source is as follows:

<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
PBE04ST114	29129	14200403	508027

BOARD / COMMISSION ACTION:

(N/A)

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Landscape Cost Sharing Agreement between the City of El Paso and the State of Texas, acting through the Texas Department of Transportation, allowing the City to participate in a landscape development project. The project will landscape 26 existing medians with an irrigation system, stamped colored concrete, provide loose aggregate for groundcover, weed barrier, vegetation and a 12 month maintenance contract on BU 54 (Dyer Street) from Hondo Pass Dr. to McCombs Street. The total estimated cost of the Project is \$730,000.00. The City's total contribution is \$480,000.00. The State contribution is an amount not to exceed \$250,000.00.

ADOPTED this 19th day of April, 2005.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto, Deputy City Manager
Building and Planning Services

STATE OF TEXAS §
COUNTY OF TRAVIS §

**LANDSCAPE COST SHARING PROGRAM
For Governmental Entities**

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the City of El Paso, Texas acting by and through its duly authorized officials as evidenced by Resolution which is attached to and made part of this contract, hereinafter called the Local Government.

WITNESSETH

WHEREAS, Transportation Code, Chapter 201 and Transportation Code, Chapter 221 authorizes the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Transportation Code, Chapter 222 authorizes a local government to contribute funding to the development of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as landscape development, hereinafter called the "Project"; and,

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State, and has established a Landscape Cost Sharing Program, 43 Texas Administrative Code section 2.65 et seq.;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government do agree as follows:

AGREEMENT

Article 1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect unless terminated, as hereinafter provided.

Article 2. Project Funding and Work Responsibilities

The State will authorize the materials purchase and performance for contracted agreements of only those Project items of work which the Local Government has requested and has agreed to maintain as described in Attachment A, payment Provision and Work Responsibilities which is attached to and made a part of this contract.

Attachment A, Payment Provision and Work Responsibilities, also specifies those Project items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

Texas Government Code, Chapter 2106 requires the State to recover indirect costs associated with this agreement as calculated based on prevailing rates specified in the State's Indirect Cost Recovery Program.

Article 3. Responsibilities of the Parties

The Local Government acknowledges that while it is not an agent, servant, nor employee of the State, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the Project.

Article 4. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* adopted by the State and incorporated herein by reference, or special specifications approved by the State.

Article 5. Maintenance

Upon completion of the installation of the Project, the Local Government will assume responsibility for the maintenance of the completed Project.

Article 6. Termination

This agreement may be terminated in the following manner:

- by mutual written agreement and consent of both parties;
- by either party upon the failure of the other party to fulfill the obligations set forth herein;
- by the State if it determines that the performance of the Project is not in the best interest of the State.

If the contract is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.

- A. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- B. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

- C. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- D. The State will not pay interest on any funds provided by the Local Government.
- E. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.

Article 7. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:	
Patricia D. Adaudo, Deputy City Manager for Building & Planning Services City of El Paso Two Civic Center Plaza El Paso, Texas 79901-1196	Charles H. Berry, Jr., P.E. District Engineer Texas Department of Transportation 13301 Gateway Boulevard West El Paso, Texas 79928-5410	Charles H. Berry, Jr., P. E. District Engineer Texas Department of Transportation 13301 Gateway Boulevard West El Paso, Texas 79928-5410

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 8. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

Article 9. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

Article 10. Amendments

By mutual written consent of the parties, this contract may be amended prior to its expiration.

Article 11. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as

acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

Article 12. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparty to effectuate this agreement.

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____
Charles H. Berry, Jr., P.E.
District Engineer, El Paso District

Date _____

**THE LOCAL GOVERNMENT
CITY OF EL PASO:**

Joyce A. Wilson, City Manager

Date _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar
Assistant City Attorney

Patricia D. Adaauto, Deputy City Manager
Building & Planning Services

Attachment A

Payment Provision and Work Responsibilities

Scope of Work

The scope of work and project limits are described as landscape 26 existing medians with irrigation system, stamped colored concrete, loose aggregate for groundcover, weed barrier, vegetation (trees and shrubs), ADA compliance implementation and 12 month maintenance contract on BU 54 (Dyer Street) from Hondo Pass Dr. to McCombs St.).

Payment Provision

The total estimated cost of the Project is \$730,000.00 and shall be funded jointly by the State and the Local Government. The Local Government's total contribution is a cash contribution of \$480,000.00. State funds in an amount not to exceed \$250,000.00 will be utilized to authorize the performance for contracted agreements for the Project. These payments will allow for a total obligated amount of \$730,000.00 for the Project installation.

The State will make recommendation of award for the bid(s) received for contracted agreements for the Project as follows:

1. If, the cumulative total of the lowest bid(s) exceeds the total obligated amount, the State and the Local government shall share in the cost of the overrun on an equal basis, each contributing 50% of the overrun. The State, in order to insure that available State funds are not exceeded, and at its sole option, may reject any or all bid(s).
2. If, the cumulative total of the lowest bid(s) does not exceed the total amount, the State will recommend award of the bid(s). The State will not contract services in excess of the quantity shown in the Project Design Plan to insure the full amount of State funds obligated for this Project is expended.

Work Responsibilities

A. Local Government agrees to:

1. Furnish the State a check in the amount of \$480,000.00 as requested by the State upon execution of agreement.
2. The Local Government shall coordinate with the State for all maintenance activities.

3. Furnish the State any revisions or modifications mutually agreed upon between the Local Government and the State.

B. State agrees to:

1. Furnish the Project Plan. the Project Plan shall contain, but not limited to, TxDOT right-of-way, limits of Project, existing underground and above ground utilities, existing drainage patterns, inventory of other existing structures (signs, traffic control devices, light poles, etc.), layout plans, construction details, drawings, specifications, schedules, and cost estimates. The Project plans specifications and estimates are incorporated herein by reference.
2. Allow Local Government and its agent(s) to utilize the right-of-way for all aspects of the Project described in this agreement.
3. Obligate State funds in the amount of \$250,000.00 which will be utilized to authorize the performance contracted agreements of only those items of work for the Project in accordance with the Project design plan.
4. Notify the Local Government upon execution of this agreement that the Local Government shall provide a check in the amount of \$480,000.00 to the State. Upon receipt of the check, the State shall place the check in escrow to be utilized to authorize the materials purchase for the Project in accordance with the Project design plan.
5. Prepare the traffic control plan.
6. Coordinate with the Local Government landscape maintenance operations consistent with District police and the Roadside Vegetation Management Manual.
7. Perform review and inspections to ensure that installation and maintenance is accomplished in accordance with the approved plans and specifications.
8. Verify location of all utilities within project area. Utility considerations shall include but not limited to the following: gas, water, electricity, fiber optics, telephone, signals, lighting, sanitary sewer, etc.
9. Provide for all necessary right-of-way and/or utility adjustments needed.